CHANG CHAI CHOI A

v.

PP

HIGH COURT SABAH & SARAWAK, KUCHING B
RAVINTHRAN PARAMAGURU JC
[CASE NO: KCH-42-4-3-2012]
30 AUGUST 2012

CRIMINAL LAW: *Anti-Trafficking In Persons And Anti-Smuggling of Migrants Act 2007 - Section 13 - Appeal against conviction and sentence - Whether sanction to prosecute must be recorded in notes of proceedings - Whether prosecuting officer authorised to prosecute - Whether charge defective and lacked particulars - Whether evidence given by victims had to be corroborated - Criminal Procedure Code, ss. 154, 156* C D

EVIDENCE: *Witness - Corroboration - Witnesses were victims in offence under s. 13 of Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007 - Whether testimony must be corroborated*

The accused was charged under s. 13 of the Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007 ("Act") for trafficking in seven young Indonesian women ("PW1 to PW7") for the purpose of exploitation. All seven alleged victims were brought to Kuching by agents in Indonesia with the promise to work as waitresses. However, the victims were found to have been forced into prostitution instead. The appellant was thus sentenced to seven years imprisonment to run concurrently in respect of the seven charges and a fine of RM5,000. This was the appeal against the appellant's conviction and sentence. The issues raised in the appellant's grounds of appeal *inter alia* were: (i) the sanction to prosecute in respect of all the seven charges was not recorded in the notes of proceedings; (ii) whether Inspector Teo who appeared before the A-Track Sessions Court Judge had the authority to prosecute; (iii) the charge was defective as it stated Anti-Trafficking In Persons 2007 And Anti-Smuggling Of Migrants Act 2007 *ie*, "2007" had been stated twice in the title of the Act, therefore it had misled the appellant and it lacked particulars of E F G H I

A exploitation or trafficking; and (iv) the evidence of the seven women were not corroborated in respect of the sexual services they were forced to provide to the customers.

Held (dismissing appellant's appeal against conviction and
B **sentence):**

(1) All the files were available for inspection in the open court during the appeal hearing and the consent to prosecute had been properly tendered in respect of all the seven charges. The inspection of the lower court file indicated that the
C prosecution had properly tendered a "consent to prosecute" as opposed to a "sanction". Hence, the argument that the consent to prosecute was not tendered was a non-issue. (para 9)

D **(2)** There was no merit on the issue of the authority of Inspector Teo to prosecute as Inspector Teo merely appeared at the arraignment when the plea was recorded. The Criminal Procedure Code (CPC) and the Act did not require a departmental prosecuting officer to tender his letter of
E authority in every case that he appears. The prosecuting officer was only required to produce his letter of authority to prosecute if it was challenged by the defence or requested by the court. (para 11)

F **(3)** The appellant was represented by a counsel and therefore should have known that the law in question was the "Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007" despite the typographical error. This ground was without merit and the appellant could not argue that he was
G misled. Section 156 of the CPC, which stated that no error in either the offence or the particulars of charge shall be regarded as material unless the accused was misled, could be invoked to regularise the error. (para 12)

H **(4)** Having regard to the charge that stated the appellant had trafficked in the seven women for exploitation, it was impossible for the appellant to have been misled by the nature of the charge. Thus, it would have not been necessary to state in detail all the means of trafficking and all the forms of
I exploitation that existed in this case. The offence under the

Act was not complicated like a commercial crime. Pursuant to s. 154 of the CPC, the manner of committing the offence need only be stated in the circumstances when it did not give the accused sufficient notice of the matter of which he is charged for. (para 15)

(5) In the instant case, corroboration was not necessary as the offence disclosed in the charge was not a sexual offence. All seven women gave consistent testimony of the manner they were brought in from Indonesia and how they were forced to work in captivity as prostitutes by the appellant and his henchmen. There was also no reason to call the owners of the pubs and karaokes to give evidence in court. (para 18)

Case(s) referred to:
Ali Noruddin Boying v. PP [2010] 10 CLJ 1 HC ***(refd)***
Choong Loke Kian & Satu Lagi v. PP [2012] 1 LNS 176 HC ***(refd)***
Ng Yu Wah v. PP [2012] 4 CLJ 494 HC ***(dist)***

Legislation referred to:
Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007, ss. 2, 13, 16
Criminal Procedure Code, ss. 152(5), 154, 156, 164, 165

For the appellant - Voon Lee Shan; M/s Voon Lee San Advocates
For the defendant - Stella Augustine Druce; DPP

Reported by Sandra Gabriel

JUDGMENT

Ravinthran Paramaguru JC:

Introduction

[1] This is an appeal by the appellant against his conviction and sentence on seven charges under s. 13 of the Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007. The appellant was sentenced to seven years imprisonment and a fine of RM5,000 in respect of each of the seven charges. The imprisonment terms were ordered to run concurrently. The appellant was charged with trafficking seven young Indonesian

A women aged between 19 and 22 years by one or more of the means stated in s. 13 for the purpose of exploitation. The offence was allegedly committed between February and May of 2011.

Summary Of Facts

B **[2]** The prosecution called a total of ten witnesses. Apart from the seven alleged victims, the other witnesses called are an Indonesian consulate officer (PW8), police photographer (PW9) and the investigating officer (PW10). The evidence of the seven alleged victims can be summed up as follows. All seven alleged C victims were brought to Kuching by agents in Indonesia with the promise of work as waitresses. Upon arrival at the border, they were met either by agents or one Allan (later identified as the appellant) and brought to the Paris Lodging House. They were regularly taken out from this place by the appellant or his workers D to pubs to meet clients for the purpose of prostitution. Their freedom was restricted and they were forced to prostitute themselves. They were also not paid in cash but only in the form of "tickets" which they were unable to redeem for cash. Three of them managed to escape from the Paris Lodging House and E reported their predicament to the Indonesian Consulate on 10 May 2011. The police then raided the Paris Lodging House and freed the other four women and the appellant was arrested.

[3] In respect of the involvement of the appellant in the F trafficking and the forced prostitution of the seven alleged victims, the evidence is as follows.

[4] PW1 said that she and two others namely PW6 and PW7 were "escorted" by agents by the name of Akim, Ato, Feri, Tri G and Pauzan across the border. She was then introduced to one Ah Chun who brought her to the Paris Lodging House on 22 February 2011. She said Ah Chun worked for one Allan whom she identified as the appellant. PW6 and PW7 gave similar testimony. PW6 even said that Ah Chun gave some money to the H agents who escorted them across the border. PW2, PW3 and PW5 were brought together across the Malaysia-Indonesia border by an agent. The appellant met them in a coffee shop across the border. They were then brought to stay in the house of the appellant in Kuching. PW4 was brought across the border by the I name of Eko and handed over to the appellant who brought her

to Kuching. She witnessed the appellant giving some money to Eko. All the women gave consistent evidence that they were promised work as waitress. However, upon their arrival in Kuching, they were housed by the appellant in Paris Lodging House and all of them with the exception of PW2 were forced to work as prostitutes. PW2 told the court that she was forced to provide sexual services to the appellant only.

[5] In respect of the nature of the offence of trafficking under s. 13, she ruled that it consists of the following elements:

1. Activity by way of recruitment, transporting, transfer, habouring or receipt.

2. Means through the threat of use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

3. Purpose of all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs;

[6] She came to this conclusion from her reading of the following provisions in the Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007:

13. Offence of trafficking in persons by means of threat, force, etc.

Any person, who traffics in persons not being a child, for the purpose of exploitation, by one or more of the following means:

(a) threat;

(b) use of force or other forms of coercion;

(c) abduction;

(d) fraud;

(e) deception;

(f) abuse of power;

A (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or

(h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person,

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commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.

Section 2

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"exploitation" means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs;

"trafficking in persons" means all actions involved in acquiring or
D maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act;

E **[7]** In my view having regard to the above provisions, she has correctly identified the ingredients of the offence under s. 13.

[8] The learned Sessions Court Judge accepted the evidence of PW1 to PW7 that they were brought across the border by agents and received by either the appellant or his accomplice, the said Ah
F Chun. She also accepted their evidence that the girls were forced to work as prostitutes (with the exception of PW2) without pay. PW2 was made to provide sexual services exclusively to the appellant. She also accepted their evidence that they were not at liberty to leave their lodging place. After having considered the
G evidence of the seven women that the appellant harboured them in Paris Lodging House, that they had been deceived into thinking that they would be working as waitresses and that they were forced to work as prostitutes, the Sessions Court Judge called for the defence. The appellant gave sworn evidence. He said that he
H is a businessman who goes to the Tebedu-Entikong border post area to sell blankets and bed sheets to Indonesians. He said that he is also in the business of finding jobs for Indonesians. He met three of the women ie, Rika aka Ica (PW6), Marlina (PW2) and

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Cindy (PW1) at Tebedu Entikong. They asked him to find jobs for them and asked to be brought to Kuching. He brought them to stay in his place in Kuching and brought them out to a karaoke at night as they were bored. He denied having sex with them or forcing them into prostitution. He denied recruiting or employing the other four women. The accused called the said Ah Chun whose real name is Kho Khoon Chun as his witness. Ah Chun told the court that he is the manager of Paris Lodging House. However, he denied that the appellant is his employer. As for the other four women, Ah Chun admitted bringing them from the border post to Kuching to stay at the Paris Lodging House because he was asked to do so by a person known as Jimmy. The learned Sessions Court Judge did not accept the evidence of the appellant that he brought the women to Kuching merely because they asked for help and that he brought them to a karaoke because they were bored. The women had identified him as the person who had forced them into prostitution and she preferred to accept the women's evidence. As for the argument that the women had consented to be brought over to Kuching, she applied s. 16 that states that it shall not be a defence that the trafficked person consented to the act of trafficking.

Grounds Of Appeal

[9] The first ground of appeal is in respect of consent to prosecute. Counsel for the appellant submitted that it was not recorded in the notes of proceedings whether the sanction to prosecute was tendered in respect of all seven charges. The consent to prosecute was first tendered when the appellant was arraigned before the A-Track Sessions Court Judge. The seven charges were registered in three separate cases. Thus the A-Track Sessions Court Judge recorded in each of the three files that the consent to prosecute was tendered. She also recorded in each of the three files that the charges were read to the appellant. However, when the notes of proceedings were typed and issued at the end of the trial, the notes that were written in the second and third file were not consolidated with the notes of proceedings from the first file. All three files were available for inspection in the open court during the appeal hearing for the benefit of counsel for appellant and the DPP. The consent to prosecute had been

properly tendered in respect of all seven charges. All seven charges were also read to the appellant at the time the case was called for mention before the A-Track Sessions Court Judge. Counsel for the appellant also submitted that the notes of proceedings stated a "sanction" was tendered. Be that as it may, the inspection of the lower court file indicated that the prosecution had properly tendered "a consent to prosecute" as opposed to a "sanction". In the premises, the argument that the consent to prosecute was not tendered is a non-issue.

[10] The second ground of appeal is that the charge was drafted in Malay. However, counsel for appellant did not pursue this argument during the appeal hearing. In any event, the learned DPP pointed out my judgment on this issue in the case of *Ali Noruddin Boying v. PP* [2010] 10 CLJ 1 was upheld by the Court of Appeal.

[11] The third ground of appeal was in respect of the authority of Inspector Teo to prosecute this case. Inspector Teo did not appear at the trial of this case. The prosecution was conducted by DPP Stella Augustine. However, Inspector Teo appeared before the A-Track Sessions Court Judge when the appellant was first produced in court to face the instant charges. The learned DPP made a statement from the bar that DPP Teo is the regular prosecuting officer in the Kuching Subordinate Courts and that he has authority to prosecute. His letter of authority from the Attorney General was not produced because there was no challenge as to his authority. I see no merit in this ground of appeal for the following reasons. Inspector Teo merely appeared at the arraignment when the plea was recorded. The prosecution was conducted by the DPP. The Criminal Procedure Code as well as the Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007 does not require that a departmental prosecuting officer is required to tender his letter of authority in every case that he appears. If that were the case, a departmental prosecuting officer who appears in a hundred traffic cases would be required to tender a hundred copies of his letter of authority before the charge is read to the accused. It is akin to asking every advocate to tender his copy of a valid practising certificate each time he appears in court. In my view, the prosecuting officer is only required to produce his letter of authority to prosecute if

challenged by the defence or requested by the court. In this case, the then defence counsel (Mr. Lim Lian Kee) did not suggest in the lower court that Inspector Teo was not clothed with authority to prosecute. Presumably, the A-Track Sessions Court Judge did not ask for it as well as Inspector Teo is the regular court prosecuting officer. In the premises, it is wholly inappropriate to ask the appellate court to quash the conviction on this ground.

[12] The fourth ground of appeal is that the charge is defective. Counsel for the appellant's reason is as follows. The charges state that the appellant committed an offence under the "Anti-Trafficking In Persons 2007 And Anti-Smuggling Of Migrants Act 2007". It must be noted "2007" is stated twice in the title of the act because of a typographical error. However, that error did not prevent counsel for appellant from submitting that the appellant was charged under an "unknown" law. In my opinion, this ground is absolutely without any merit. The appellant was represented by counsel and therefore should have known that the law in question was the "Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007" in spite of the typographical error. Therefore, the appellant cannot argue that he was misled. In the premises, s. 156 of the Criminal Procedure Code, which states that no error in stating either the offence or particulars in the charge shall be regarded as material unless the accused was misled, can be invoked to regularise this error.

[13] The fifth ground of appeal was that the seven charges were wrongly heard in a single trial and this contravened s. 164 of the Criminal Procedure Code which says that only three offences of the same kind within 12 months may be charged together. However, learned counsel for the appellant omitted to consider s. 165 which permits joint trial for many offences if they are committed in the same transaction by the same person. In this case, an application for joint trial was granted upon the application of the prosecution and no issue was made of it by the then counsel for appellant. In the premises, this ground is without merit.

[14] The sixth ground of appeal is that the charge was defective on the ground of lack of particulars of exploitation or trafficking. The argument of counsel for the appellant is that the lack of particulars had prejudiced the applicant in his defence. With

respect, I find no merit in this case. "Trafficking" in s. 2 includes one or more means such as abduction, deception etc. The legal definition of exploitation is wide as well. It refers to all forms of sexual exploitation, slavery etc. Section 152(5) states as follows:

> (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

[15] In the instant case, the appellant was charged with trafficking under s. 13. This simply means that the appellant had trafficked a human being for the purpose of exploitation. The evidence that unfolded during the case for the prosecution was that the seven women were deceived into coming into the country and upon arrival were taken by the appellant or his workers to work as prostitutes against their will. Having regard to the charge that stated that the appellant had trafficked the said seven women for exploitation, it is impossible for the appellant to have been misled as to the nature of the charge. Thus it would not have been necessary to state in detail all the means of trafficking and all the forms of exploitation that existed in this case. As observed in the case of *Choong Loke Kian & Satu Lagi v. PP* [2012] 1 LNS 176, an offence under Anti-Trafficking In Persons And Anti-Smuggling Of Migrants Act 2007 is not complicated like a commercial crime. Section 154 says that the manner of committing the offence need to be stated only in cases where particulars such as the name of the offence or section of the offence does not give the accused sufficient notice of the matter with which he is charged. Even for the offence of murder, the manner of committing the offence need not be stated in the charge. In the instant case, for the reasons given earlier, it is clear the charge of trafficking under s. 13 for purpose of exploitation gave sufficient notice of the offence to the appellant. Counsel for the appellant cited the case of *Ng Yu Wah v. PP* [2012] 4 CLJ 494 to support his argument that particulars of exploitation must be given. However, it must be noted that in the above mentioned case the words "for the purpose of exploitation" was omitted and this was the reason, the conviction was set aside. In the instant case, all the charges stated the young women in question were trafficked for purpose of exploitation. It is obvious that a trafficked woman can be subjected to more than one form of exploitation. It is sufficient if

the evidence led by the prosecution supports one or more of the forms of exploitation stated in s. 2. I, therefore, see no merit in this ground.

[16] The seventh ground of appeal was that the learned Sessions Court Judge made a collective pronouncement of finding of guilt for all charges at the same time. The learned Sessions Court Judge said as follows:

> ... I therefore found the accused guilty on all the seven (7) charges herein.

[17] There is nothing wrong with the above pronouncement as it means that the prosecution has proved its case beyond reasonable doubt in respect of all the charges.

Other Grounds

[18] Counsel for the appellant submitted that the evidence of the seven women were not corroborated in respect of the sexual services they were forced to provide to customers. He submitted that there is no corroboration in respect of the allegation that the appellant had raped some of the women. In my opinion, corroboration is not necessary as the offence disclosed in the charge is not a sexual offence. In any event, the learned Sessions Court Judge found that the all seven women gave consistent testimony in respect of the manner they were brought in from Indonesia and forced to work in captivity as prostitutes by the appellant and his henchmen. Counsel for the appellant then argued that none of the customers were produced in court. He also said that the owners of the pubs and karaokes to which the women were brought were not called to give evidence. Again there is no merit in this argument, as the Sessions Court Judge accepted the evidence of the said women that they were forced to provide sexual services to patrons of the various karaokes to which they were brought. Only PW2 said that she was ordered to provide exclusive sexual services to the appellant. In respect of other grounds on the finding of fact of the learned Sessions Court Judge, to my mind, her decision should not be lightly interfered as she has given good reasons in her lengthy and well reasoned judgment for accepting the testimony of the seven women and

A rejecting the evidence of the appellant. An appellate court should not lightly interfere with a finding of fact unless there was lack of judicial appreciation of the evidence on the part of the trial court which is not the case here. I shall, therefore, dismiss the appeal against conviction on all the seven charges.

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[19] In respect of the sentence, maximum imprisonment provided by the law is 20 years. In her judgment, the learned Sessions Court Judge considered all the correct sentencing principles. She gave due weight to the mitigating factors presented by counsel for
C appellant. However, she also gave due consideration to the gravity of the offence in question. The appellant was the central figure in the sexual enslavement of seven young women. In the premises, the seven years imprisonment is reasonable. If the Sessions Court Judge had erred, it was probably on the side of leniency. It must
D also not be forgotten that although seven charges had been preferred, she ordered all sentences to run concurrently. However, the prosecution has not appealed against the sentence. For the foregoing reasons, I shall dismiss the appeal against the sentence as well.

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